

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

JOSEPH JONES,

Plaintiff,

v.

JAMES P. MILLER AND GOLDEN RULE
AIR CONDITIONING & HEATING, LLC

Defendants.

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CIVIL ACTION NO.

JUDGE:

MAGISTRATE:

NOTICE OF REMOVAL

Without waiving any defenses or objections to the Petition filed in state court, Defendants James P. Miller and Golden Rule Air Conditioning & Heating, LLC (collectively, “Defendants”) hereby give notice of the removal of the action entitled, “Joseph Jones v. James P. Miller and Golden Rule Air Conditioning & Heating, LLC,” Docket No. 2016-83846, 61st Judicial District Court for Harris County, State of Texas, from the 61st Judicial District Court to the United States District Court for the Southern District of Texas. In support of its Notice, Defendants respectfully represent as follows:

STATEMENT OF GROUNDS FOR REMOVAL

1. As set forth more fully below, removal and jurisdiction are based upon 28 U.S.C. §§ 1331 and 1441.
2. Plaintiff Joseph Jones (“Plaintiff”) commenced this action on December 6, 2016, by filing an Original Petition entitled “Joseph Jones v. James P. Miller and Golden Rule Air Conditioning & Heating, LLC,” Docket No. 2016-83846, 61st Judicial District Court for Harris County, State of Texas. [See Original Petition attached hereto as part of Exhibit

A]. Plaintiff's Original Petition, however, named and served the wrong defendant ("Mr. E's AC and Heating, Inc. d/b/a Golden Rule Air Conditioning and Heating").

3. To remedy this, Plaintiff filed his First Amended Petition on February 6, 2017, which named the correct defendant, Golden Rule Air Conditioning & Heating, LLC ("Golden Rule"), and was served on Golden Rule on that same date. [See First Amended Petition attached hereto as part of Exhibit A].

FEDERAL QUESTION

4. Under the "well-pleaded complaint" rule, a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff's well-pleaded complaint. *Bernhard v. Whitney Nat. Bank*, 523 F.3d 546 (5th Cir. 2008).
5. Plaintiff alleges in his First Amended Petition that "Mr. Jones signed a contract with the company, under which he is owed outstanding commissions, outstanding bonus payment, a lump sum severance payment, and accrued vacation/PTO time. The company has not paid him a single cent, and is in violation of the FLSA and Texas Payday Laws." [Petition at ¶ 11]. The inclusion of this allegation evidences Plaintiff's intent to pursue claims under federal law, namely, the Fair Labor Standards Act ("FLSA"). Actions under the FLSA may be removed from state to federal court by the employer. *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003).
6. Accordingly, a federal question exists since Plaintiff's action arises under the laws of the United States.
7. Pursuant to 28 U.S.C. § 1367, this Court also has supplemental jurisdiction over Plaintiff's state law claims which form part of the same case or controversy as his federal law claims.

CERTIFICATION OF COUNSEL

8. Pursuant to 28 U.S.C. § 1446(d), undersigned counsel certifies that a copy of this Notice of Removal will be served on opposing counsel and also that a copy of this Notice of Removal will be filed with the Clerk of Court of the 61st Judicial District Court for Harris County, State of Texas, promptly after the filing of this Notice of Removal and in the manner required by applicable law.
9. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.
10. A copy of all process, pleadings, and orders served upon Defendants James P. Miller and Golden Rule Air Conditioning & Heating, LLC is attached as Exhibit A.

Respectfully submitted,

/s/ Amanda Wingfield Goldman

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**ATTORNEYS FOR DEFENDANTS,
JAMES M. MILLER AND GOLDEN RULE
AIR CONDITIONING AND PLUMBING, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was electronically filed with the Court to be served on all counsel of record by operation of the Court's ECF filing/notification system.

This 23rd day of February, 2017.

/s/ Amanda Wingfield Goldman